

United States Postal Service and Northwest Louisiana Area Local, American Postal Workers Union, AFL-CIO. Case 15-CA-7762(P)

31 May 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS**

Upon a charge filed 26 June 1980 by Northwest Louisiana Area Local, American Postal Workers Union, AFL-CIO, and duly served on United States Postal Service, the Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 15, issued a complaint 7 August 1980 against the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that commencing about 1 June 1980, and at all times thereafter, the Respondent has refused, and continues to date to refuse, to abide by the terms of a grievance resolution arrived at through the collective-bargaining process. On 14 August 1980 the Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On 6 February 1981 the Respondent filed directly with the Board a Motion for Summary Judgment on the ground, inter alia, that the allegations in the complaint do not state a violation of the National Labor Relations Act. Thereafter, on 18 February 1981, the General Counsel filed a Cross-Motion for Summary Judgment. On 20 February 1981 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the Respondent's and/or the General Counsel's Motion for Summary Judgment should or should not be granted. The Respondent thereafter filed a supplemental memorandum in support of its Motion for Summary Judgment.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following

Ruling on Motion for Summary Judgment

The undisputed facts herein are as follows: The Respondent and the American Postal Workers Union, AFL-CIO, are parties to a national collective-bargaining agreement covering the Respondent's maintenance employees, special delivery mes-

sengers, motor vehicle employees, and postal clerks. Article XXX of the national contract, which was then in effect from 21 July 1978 to 20 July 1981, authorizes locals of the American Postal Workers Union to enter into a local "memorandum of understanding" concerning matters of local interest. Pursuant to this provision the Respondent and the Union executed such a memorandum applicable to unit employees employed at the Respondent's Shreveport, Louisiana facility.

In December 1979 the Respondent assigned employee J. T. Riley to assist in the training of new employees at the Shreveport postal facility. Riley worked in this capacity for 2 or 3 days before returning to his regular job as postal clerk. Since Riley was not the most senior clerk in his section, the Union timely filed a grievance alleging that the Respondent had violated article XII, section 2.2, of the Shreveport local agreement by failing to offer the trainer position to the clerk possessing the greatest seniority.¹ The parties resolved this dispute at step two of the grievance procedure 19 December 1979 after the Respondent accepted the Union's position on the issue.

Thereafter, about 31 May 1980, the Respondent assigned Riley and another employee, D. L. Scott, to help with the on-the-job training of new employees. Riley and Scott were not the most senior employees in their section. Thus, the Union filed new grievances over the selection of these employees for trainer details. About 20 June 1980 the Respondent orally denied these grievances at step two of the grievance procedure. The Respondent confirmed its denial in writing the following week stating: "Your grievance is denied for the reason that the detail assignment will cease since the duties of the assignment are incorporated in the [permanent] position now posted for bid." Rather than pursue the dispute to the next step of the grievance procedure, the Union filed the instant charge alleging that the Respondent had refused to bargain in violation of Section 8(a)(5) of the Act.

In its Motion for Summary Judgment and its supporting memoranda, the Respondent contends, inter alia, that this case should be deferred to the parties' grievance-arbitration procedure under the policy expressed by the Board in *Collyer Insulated Wire*, 192 NLRB 837 (1971). The General Counsel contends that the Respondent's repudiation of the grievance resolution amounts to a renunciation of the entire bargaining process in violation of Section 8(a)(5) of the Act. For the reasons set forth below, we agree with the Respondent that the unfair labor

¹ Art. XII—Seniority, sec. 2.2, provides as follows: "Special details shall be filled by senior qualified volunteer of that respective section."

practice allegations should be deferred to the parties' grievance-arbitration procedure.²

In its recent decision in *United Technologies Corp.*, 268 NLRB 557 (1984), the Board held that the policy expressed in *Collyer* "deserve[d] to be resurrected and infused with renewed life."³ In so doing, the Board stated (*id.*):

It is fundamental to the concept of collective bargaining that the parties to a collective-bargaining agreement are bound by the terms of their contract. Where an employer and a union have voluntarily elected to create dispute resolution machinery culminating in final and binding arbitration, it is contrary to the basic principles of the Act for the Board to jump into the fray prior to an honest attempt by the parties to resolve their disputes through that machinery. For dispute resolution under the grievance-arbitration process is as much a part of collective bargaining as the act of negotiating the contract. In our view, the statutory purpose of encouraging the practice and procedure of collective bargaining is ill-served by permitting the parties to ignore their agreement and to petition this Board in the first instance for remedial relief.

While emphasizing that its deferral policy would be "applied with the rule of reason," the Board also indicated in *United Technologies* that it would not defer to arbitration those cases where the respondent's conduct constitutes a rejection of basic collective-bargaining principles.

Although the General Counsel argues, as noted, that the Respondent has engaged in such conduct here, we fail to see how the Respondent's alleged failure to abide by a single prior grievance resolution demonstrates that it has substantially renounced its bargaining obligation with the Union. The Respondent's refusal to accord the prior grievance resolution the status of binding precedent was based on its view of the merits of the grievance in issue here, not on a broad rejection of the applicability of the grievance-arbitration process. Thus, we find that the Respondent's conduct does not amount to a repudiation of basic collective-bargaining principles. We note that there is no contention that the parties are not continuing to process and resolve grievances on other matters. For these rea-

sons, we find that deferral is appropriate in this case.

Thus, applying the policy announced in *United Technologies* to the present case, we conclude that this case, in fact, is eminently well suited for deferral. As in *United Technologies*, there is no dispute here that the parties' collective-bargaining agreement contains a grievance-arbitration provision clearly encompassing the unfair labor practice allegations. And as in *United Technologies*, the Respondent has expressed its willingness to resolve the dispute through arbitration. Accordingly, we shall order that the Respondent's Motion for Summary Judgment be granted and the General Counsel's Cross-Motion for Summary Judgment be denied, that the complaint allegations be deferred to the parties' grievance-arbitration procedure, and that the complaint be dismissed. As in *United Technologies*, however, we shall retain jurisdiction for the purpose of entertaining a motion for further consideration on a showing that either (1) the dispute has not been resolved in the grievance procedure or submitted to arbitration, or (2) the grievance or arbitration procedures have not been fair and regular or have reached a result which is repugnant to the Act.⁴

On the entire record, the Board makes the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

United States Postal Service provides postal services for the United States of America and operates various facilities throughout the United States, including its facility in Shreveport, Louisiana. The Board has jurisdiction over the Respondent pursuant to Section 1209 of the Postal Reorganization Act, 39 U.S.C. § 101, et seq.

II. THE LABOR ORGANIZATION INVOLVED

Northwest Louisiana Area Local, American Postal Workers Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

CONCLUSIONS OF LAW

The unfair labor practice violations in the complaint should be deferred to the grievance-arbitration procedure established by the parties' collective-bargaining contract.

² Based on our disposition of this case, we find it unnecessary to pass on the other contentions which the Respondent raised in its Motion for Summary Judgment.

³ Accordingly, *United Technologies* overruled the policy expressed in *General American Transportation Corp.*, 228 NLRB 808 (1977), of declining to defer unfair labor practice cases alleging violations of Sec. 8(a)(1) and (3) and Sec. 8(b)(1)(A) and (2) of the Act.

⁴ The Respondent must, of course, waive any timeliness provisions of the grievance-arbitration clauses of the collective-bargaining agreement so that the Union's grievance may be processed in accordance with this decision.

ORDER

The Respondent's Motion for Summary Judgment is granted, the General Counsel's Cross-Motion for Summary Judgment is denied, and the complaint is dismissed, provided that:

Jurisdiction of this proceeding is retained for the limited purpose of entertaining an appropriate and timely motion for further consideration on a proper

showing that either (1) the dispute has not, with reasonable promptness after the issuance of this Decision and Order, either been resolved by amicable settlement in the grievance procedure or submitted promptly to arbitration, or (2) the grievance or arbitration procedures have not been fair and regular or have reached a result which is repugnant to the Act.